

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

CURTIS WEDO POOLE,

Plaintiff,

VS.

WARDEN BARROW, et al.,

Defendants.

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**7 : 05-CV-21 (HL)**

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**RECOMMENDATION**

Presently pending in this *pro se* prisoner § 1983 action is plaintiff's motion for default judgment (doc. 27)

Plaintiff filed this motion for default judgment on June 5, 2007 against all defendants.

The undersigned ordered that defendant Barrow be served with the complaint on October 21, 2005. Defendant Barrow filed his answer to this complaint on November 30, 2005, well within the sixty days contemplated by the Waiver of Service.

Pursuant to plaintiff's amended complaint, process for service for defendants Anderson and Hurst was not issued until June 5, 2007. The process for Hurst was returned as undeliverable, as no such person was employed there. Plaintiff has subsequently identified Mrs. Horton as the proper party, and that has been addressed by separate order. However, Mrs. Horton has never been served with this lawsuit, and consequently cannot be in default.

Defendant Anderson filed a Waiver of Reply or in the alternative motion for a more definite statement on August 9, 2007, which was filed within the sixty day period contemplated by the waiver of service. Therefore, defendant Anderson is not in default on this matter.

Consequently, it is the RECOMMENDATION of the undersigned that plaintiff's motion for

default be **DENIED**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable Hugh Lawson, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

**SO RECOMMENDED**, this 29<sup>th</sup> day of November, 2007.

//S Richard L. Hodge  
RICHARD L. HODGE  
UNITED STATES MAGISTRATE JUDGE

msd